



Home Office

Introduction of new powers to allow law enforcement agencies to seize and detain chemical substances suspected of being used as drug cutting agents.

A consultation document

May 2013

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1. Summary

1. Certain chemical substances, some of which may also be used in the manufacture of medicinal products for human or veterinary use (so called “active substances”) can be used as cutting agents for bulking illegal drugs, thereby maximising criminal profit margins.
2. The ‘grey market’ trade (i.e where it is unclear if there is an apparent legitimate end use) in these substances has become a significant element of the domestic cocaine trade over the last 5 years, but there are currently no laws or regulations that specifically target the domestic trade in cutting agents. This trade impacts across the UK enabling organised criminals to maximise their profits from the trade in illegal drugs and increases the risks posed to local communities.
3. The 2010 Drug Strategy made a commitment to develop a robust approach to stop criminals profiting from the trade in cutting agents, working with production countries, the legitimate trade and international partners.

2. Issue

4. Over the last 5 years it has become common for organised criminals to use certain chemical substances as cutting agents to bulk the volume of illegal drugs after importation. In the UK, benzocaine, lidocaine and phenacetin are the most common chemicals used to 'cut' these substances. This is because these chemicals mimic some of the effects, as well as resembling the drug in appearance, allowing a significant increase in adulteration of the illicit drug than would be possible with an inert substance such as glucose.
5. In 2012 over 7 tonnes of benzocaine, lidocaine and phenacetin were seized, having been imported into the UK under suspicious circumstances.
6. The majority of cocaine available at street level contains one or more adulterants, the most common being benzocaine. From April to June 2012, the most recent reporting period, 55% of police samples of cocaine^[1] seized and forensically tested contained benzocaine. The next most common adulterants were phenacetin and lidocaine. For the same reporting period the weighted mean purity of cocaine at border importation was 78%, with middle market street dealer purity averaging 30-40%. Street level cocaine purity ranged from 1-30%, but more often in the lower percentage ranges. As forensic testing cannot determine exact percentage ratio rates of adulterants we cannot provide an estimate of the criminal profits or the increase in availability of cocaine in the UK as a result of this adulteration. It is nevertheless likely to be significant.
7. Benzocaine and lidocaine are however legal to import and sell as bulk chemicals. They are used within the pharmaceutical industry as active substances in a number of medicinal products. However, they have limited legitimate use in the UK in raw powder form, requiring laboratory processes and licensing for manufacturing into an administrable form. Phenacetin, also legal to import and sell, is an analgesic that is no longer used in legitimate business because of its carcinogenic properties.
8. Lidocaine can also be lawfully prescribed as a medicine. Those patients seeking to travel across international boundaries with legitimately prescribed medicines for their own use will not be impacted by this new measure.
9. The Government is committed to taking a robust approach to stop criminals profiting from the trade in cutting agents. Accordingly the Government proposes to introduce new powers to enable law enforcement officers to seize and detain specified chemical substances which are reasonably suspected of being intended for use in unlawful conduct (i.e drug trafficking).

[1] SOCA Project Endorse data

3. Background

3.1 Policy context

10. Drugs ruin lives and cause misery to families and communities and this Government is committed to breaking the vicious cycle of drug and alcohol dependency. There are however no quick fixes; simply focusing on reducing the harms caused by illicit drug use is not enough. Therefore the cross-government Drug Strategy, launched in 2010, has recovery, meaning freedom from dependence on drugs and alcohol and helping individuals to re-build their lives, at its very core.
11. In addition, the strategy puts a strong emphasis on prevention to reduce demand for drugs, through an emphasis on improved information, education and early intervention with at-risk groups. This approach is enforced through scheduling harmful drugs, applying robust sanctions for supply and possession, while diverting individuals into appropriate tailored treatment to support, encourage and challenge their behaviour and enable their recovery.
12. The Home Office leads a cross-government programme of work to implement the strategy, which also includes a commitment to adopt a robust approach to stop criminals profiting from the trade in cutting agents, working with production countries, the legitimate trade and international partners.

3.2 Legislative framework

13. The Government regulates the possession, supply, production and import and export of drugs subject to control under the Misuse of Drugs Act 1971. It does so because of the harm misuse of these controlled drugs can cause to individuals and society.
14. The Misuse of Drugs Act 1971 is however only to be used to impose controls on narcotic or psychotropic drugs if it is likely to be misused and it is capable of causing harmful effects to an individual sufficient to constitute a social problem. Benzocaine, lidocaine and phenacetin are not primary drugs of misuse; they are not psychoactive and not attractive in themselves to misusers.
15. Medicines legislation, meanwhile, has been designed to ensure the safety, quality and efficacy of medicinal products. Directive 2001/83/EC on the Community Code relating to medicinal products for human use has recently been amended by the Falsified Medicines Directive (2011/62/EC) and now requires manufacturers, importers and distributors of active substances that supply active substances for processing by an authorised manufacturer to register with their competent authority for the control of medicines.

3.3 Active substances

16. Active substances are chemicals that have a legitimate use as the constituent part of a medicinal product or device that causes the product to be effective in treating a disease.
17. For the three most commonly identified active substances used as cutting agents, benzocaine is a local anaesthetic used for topical pain relief, lidocaine (formerly lignocaine) is a local anaesthetic used for topical pain relief and injected in dentistry whilst phenacetin, once previously widely used as an analgesic, is no longer used in legitimate business.

3.4 Legitimate trade and business

18. The Government believes that its preferred option should have a minimal impact on legitimate trade and therefore result in no additional cost to business, above and beyond that which will already have been incurred as part of the EU Falsified Medicines Directive (2011/62/EC) implementation.

4. Options

Option 0: Do nothing - continue to use wider existing powers

19. There are currently no laws or regulations that specifically target the domestic trade in cutting agents. Consequently, in the absence of a successful prosecution for conspiracy to supply controlled drugs, or assisting in the commission of an offence, there needs to be an explicit legal basis for the seizure and detention of cutting agents that are suspected of being used in unlawful conduct. This will ensure that law enforcement agencies do not have to return previously seized cutting agents where they are likely to be used to facilitate the supply in illegal drugs.

Q.1 – To what extent do you agree or disagree with the following statements about the wider existing powers? (i.e conspiracy to supply controlled drugs/offences under the Serious Crime Act)

- The existing powers available to enforcement agencies are ineffective in tackling the trade in chemical substances being used as drug cutting agents.
- The existing powers have been weakened by recent changes to the market.

Scale: Strongly agree, tend to agree, tend to disagree, strongly disagree, don't know

Please provide comments to explain your answers:

1 Section 45 of the Serious Crime Act 2007 deals with the offences of encouraging or assisting the commission of other offence believing it will be committed.
Section 46 of the Serious Crime Act 2007 deals with the offences of encouraging or assisting the commission of other offence believing one or more will be committed.

Option 1: Introduce new powers to allow law enforcement agencies to seize and detain specified chemical substances suspected of being used as drug cutting agents.

20. The Government's preferred option is to introduce new powers to allow law enforcement agencies to seize and detain specified chemical substances that are reasonably suspected of being intended for use in unlawful conduct. We would envisage these powers being available to the Serious Organised Crime Agency (SOCA) and the future National Crime Agency (NCA), police forces, and UK Border Force (UKBF), and that they would include:

- a power to enter and search premises for specified chemical substances if a law enforcement officer has reasonable grounds to suspect they are intended for use in unlawful conduct;
- a power to seize any such substances if a law enforcement officer has reasonable grounds to suspect they are intended for use in unlawful conduct; and
- a power to detain any such substances for an initial period of 30 days

21. We would envisage that law enforcement officers would then be able to make an application to a magistrates' court or the sheriff for the continued detention of the seized substances for an initial period of 30 days. At a hearing to decide on an application for detention, we would expect that the burden of proof (to the civil standard) will fall on the importer to prove the legitimacy of the import (e.g. source, destination and final use of the chemical substance). We would propose that if importer cannot do so then law enforcement officers could make a further application for forfeiture of the detained substances. The substances could then be destroyed or otherwise disposed of. We will also make provision for importers to apply for compensation in cases where their goods are detained but no forfeiture order is subsequently made.

22. We have drawn this process from existing cash seizure and forfeiture powers under section 289 to 303 of the Proceeds of Crime Act, which provides analogous civil powers for law enforcement agencies to confiscate cash which is recoverable property or intended for use in committing a criminal offence. As with these existing powers, we would envisage the detailed procedures for applications to a magistrates' court or the sheriff under the proposed new powers being covered by civil procedure rules.

23. It is proposed that the new powers would apply to benzocaine, lidocaine and phenacetin, the three main chemical substances being used as cutting agents in the UK. We would propose taking an order-making power to specify these substances in secondary rather than primary legislation, which will allow flexibility to expand the power to cover similar substances in the future, if necessary.

24. The overall objective of this proposal is to strengthen the mechanisms currently used to restrict the supply of illicit drugs in the UK. We aim to provide law enforcement agencies with a range of new powers to enable the identification, seizure, detention and forfeiture of cutting agents that are suspected of being for use in drug trafficking.

25. The EU Falsified Medicines Directive (2011/62/EC) (FMD) is expected to be transposed into UK medicines legislation in spring 2013, through an amendment to the Human Medicines Regulations 2012 [SI 2012/1916]. The amending Regulations will require all UK manufacturers, importers and distributors of active substances for human use to register with the Medicines and Healthcare products Regulatory Agency (MHRA).

26. This registration process will enable UK law enforcement agencies to ensure that only shipments from 'grey market' (unregistered) importers are targeted. If a company holds a marketing authorisation or is registered under the FMD as a manufacturer, importer or distributor of active substances for the pharmaceutical industry, their shipments should not be inhibited at importation, meaning that there should be no interruption to legitimate pharmaceutical trade and no resultant cost implication.
27. It is likely that the majority of cases in which law enforcement (SOCA, and in the future NCA, UKBF, police) would seek to use the powers would be where no evidence of a legitimate end-use can be shown, or where other evidence is more compelling, indicating that the chemical substance is destined for use by organised criminals to cut controlled drugs.
28. As the expected impact of the policy is a redistribution of activity amongst law enforcement agencies (to include the police and Border Force), but not an increase in overall enforcement activity, we do not expect there to be any additional costs imposed on importers, including grey market traders.

Q.2 - To what extent do you agree or disagree with the following statements about the proposed approach to tackle the trade in chemical substances being used as drug cutting agents?

- These new powers will be more effective than the existing wider powers in tackling the trade in chemical substances being used as drug cutting agents.

Scale: Strongly agree, tend to agree, tend to disagree, strongly disagree, don't know

- The proposed approach will not impact negatively on legitimate trade and business in active chemical substances.

Scale: Strongly agree, tend to agree, tend to disagree, strongly disagree, don't know.

Please provide comments to explain your answers:

Q.3 - To what extent do you agree or disagree with the proposed approach for the execution of the new powers?

Scale: Strongly agree, tend to agree, tend to disagree, strongly disagree, don't know.

Please provide comments to explain your answers:

Q.4 - To what extent do you agree or disagree with the assumptions made in the impact assessment?

Scale: Strongly agree, tend to agree, tend to disagree, strongly disagree, don't know.

Please provide comments to explain your answer:

Q.5 - In your view, are there any additional costs or savings that have not been identified in the impact assessment but should be taken into consideration?

Yes / No

If yes, please provide comments to explain your answer:

Q.6 - Falsified Medicines Directive (FMD) registered importers/ brokers/manufacturers are expected to experience no changes to their activities as a result of this proposal.

To what extent do you agree or disagree that it will not create any additional impact on business?

Scale: Strongly agree, tend to agree, tend to disagree, strongly disagree, don't know.

Please provide comments to explain your answer:

Q.7- As we propose reversing the burden of proof onto businesses, are there any additional costs or impacts to businesses that have not been identified in the impact assessment but should be taken into consideration?

Yes / No

If yes, please provide comments to explain your answer:

Q.8 - The sale of cutting agents for 'research' or non- human use falls outside the requirement to register with the MHRA. Other than the UK pharmaceutical industry are there any other UK businesses that you believe will be affected by this proposal? If so, please provide details.

Q.9 - If you have any other comments on the proposals not already covered in your answers above, please provide them below:

5. Consultation Responses

5.1 About this consultation

29. We would welcome any comments on the Government's preferred option, particularly where these comments evidence any unintended consequences that might arise as a result of introducing new powers in respect of cutting agents and specifically benzocaine, lidocaine and phenacetin.

5.2 Geographical scope:

30. This policy would apply to the United Kingdom.

5.3 Impact assessment (IA):

31. A consultation stage impact assessment has been prepared and can be found at annex A.

5.4 Duration:

32. This consultation was published on the 28th May. It will close on 7th July 2013.

5.5 Enquiries and responses:

Online: to insert hyperlink

By post:

Frances Hardy
4th Floor Fry Building
2 Marsham Street
London
SW1P 4DF

By email:

drugcuttingagentsconsultation@homeoffice.gsi.gov.uk

5.6 Additional ways to become involved:

33. Because it is envisaged that legitimate trade and use of active substances will not be affected by the proposals this consultation is likely to be of specialist interest. For this reason the consultation will be carried out solely by the above methods.

5.7 After the consultation:

34. A summary of responses will be published before or alongside any further action. Implementation of the proposed policy will take place as early as possible, subject to comments received in response to this consultation and the views of Ministers.
35. Should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio, you should contact the Home Office at the address given above in the 'About this consultation' section.

5.8 Responses: Confidentiality & Disclaimer

36. The information you send us may be passed to colleagues within the Home Office, other Government departments and related agencies for use in connection with this consultation.
37. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with applicable access to information frameworks (primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).
38. If you want certain information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
39. In view of this you should explain to us why you regard any information you have provided as confidential. If we receive a request for disclosure of the information we will take due account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
40. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

5.9 Consultation criteria

41. The Consultation follows the Consultation Principles published by the Cabinet Office in July 2012. The Government believes that a six week consultation period is appropriate in this case.

5.10 Consultation Co-ordinator

42. If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Adam McArdle, who can be contacted at: adam.mcardle2@homeoffice.gsi.gov.uk.

5.11 About you

43. The following questions ask for some information about you. The purpose of these questions is to provide some context on your consultation responses and to enable us to assess the impact of the proposals on different groups of people. By providing this information you are giving your consent for us to process and use this information in accordance with the Data Protection Act 1998.

44. Which of the following best describes you or the professional interest you represent? Please select one from the list below:

- Individual involved in the supply/importation of specified active substances.
- Small or medium sized enterprise involved in the supply/importation of specified active substances.
- Large business involved in the supply/importation of specified active substances.
- Trade body representing the above.
- Enforcement agency:
 - Police.
 - Local Authority.
 - SOCA.
 - International.
- Central government.
- Member of the public.
- Other (please specify).

45. If you are responding on behalf of an organisation or interest group, how many members do you have?

46. Where are you or your organisation based?

England

Wales

Scotland

Northern Ireland

European Union

Rest of world

47. If you are happy to be contacted should we have queries about any of your responses, please provide your email address.

If you do provide your email address we will only use it if we wish to ask you follow-up questions about your response to this consultation or to send you a link to the consultation response when it becomes available. We will keep your email address electronically on a secure Government system for up to six months starting from when the consultation finishes. We will not share your information with any third party.

Providing your contact details is voluntary. Please be assured that they will be treated as personal data by the Home Office in compliance with government guidance on holding personal information.

Home Office consultation confidentiality information link

<http://www.homeoffice.gov.uk/publications/about-us/corporate-publications/consultation-confidentiality>

